not feasible.[31] AT&T revised and resubmitted the CR without a specified time frame.

- *CORBA Pre-Ordering Interface*: Qwest denied this AT&T CR, which was submitted on February 27, 2003, on the ground that the significant costs involved in creating a third interface for pre-ordering do not justify the benefits.[32] Qwest notes that Section 271 does not require BOCs to provide access to a CORBA interface for pre-ordering, so long as another adequate application-to-application pre-ordering interface is available.[33] The Commission has already approved Qwest's existing EDI pre-ordering interface as meeting the requirements of Section 271.

- *Parsed CSR Improvements*: Presumably AT&T is referring to its request that CRs be formatted by telephone number (TN), not by USOC. AT&T submitted this CR on February 27, 2003. It has been prioritized for possible inclusion in IMA release 14.0 (rank is four).[34]

- *Industry Standard Line Loss Notice*: This CR, which was submitted on February 27, 2003, was ranked 13 in the IMA 14.0 prioritization.[35] This information is already available to CLECs in the Daily Loss Report.

- *Class of Service Code Requirement:* It appears that AT&T is referring to a requirement that CLECs include the Retail class of service USOC on an LSR when submitting a conversion request.[36] That issue was addressed by the Z-Tel migrate-as-specified CR,

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31 *See* JMS-CMP-2 (CMP Framework) at §5.1.4.

32 *See* SCR22703-05 (Pre-Order CORBA). The history of this CR may be accessed on the Qwest Wholesale Website at www.qwest.com/wholesale/cmp/ changerequest.html, under "Change Requests/Archives".

33 *See Massachusetts 271 Order* at ¶ 52 (Commission took note of, but did not rely on, the existence of a CORBA interface, because Verizon had demonstrated that it already had in place a Section 271-compliant application-to-application pre-ordering interface.)

34 *See* SCR022703-04 (Support of Parsed and Structured CSR).

35 *See* SCR022703-12 (Line Loss Notification – 836 EDI).

36 Finnegan Decl. at ¶ 10, n.9.

which was implemented with IMA-EDI 12.0 on April 7, 2003.

- *Implementation of Industry Standard CABS BOS edits:* On January 21, 2003, AT&T submitted a CR requesting that additional edits be implemented as part of the process used to create a BOS-formatted bill.[37] That CR was presented to the CLECs in the February CMP monthly meeting. Qwest has accepted and assessed the CR and provided the level of effort estimate to the CLECs. This CR is currently being scheduled for implementation.

13. In sum, then, nothing in AT&T's comments provides a basis for the FCC to question its prior conclusion that Qwest's EDI documentation and its EDI pre-ordering and ordering interfaces are adequate to provide competitors a meaningful opportunity to compete, and that Qwest has thus satisfied Section 271's requirements.

II. REJECT RATES

14. AT&T contends that it has experienced an increase in reject rates in recent months, and that these recent reject rates are high.[38] In reliance on this data, AT&T contends that Qwest fails to provide nondiscriminatory access to its OSS and that defects in its OSS are the cause of the high reject rates.[39] Other than pointing to address-related issues (some of which should be addressed by Qwest's implementation of TN migration for UNE-P in IMA release 12.0 last month), AT&T makes no attempt to explain

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[37] *See* SCR012103-02 (CABS/BOS IABS Updates: Perform all standard CABS BOS edits on the UNE bills).

[38] AT&T Comments at 21; Finnegan Decl. at ¶¶ 40-48.

[39] *Id.*

why its reject rates have risen recently, or why they are relatively high.[40] Instead, AT&T asks the Commission simply to assume that this rise is the fault of Qwest's OSS and to deny its Section 271 Application on that basis.

15. Many of these arguments were raised by CLECs and addressed by Qwest already in *ex parte* filings made in the Qwest IV proceeding.[41] The Commission considered these arguments and nevertheless concluded in its *Qwest IV Order* that Qwest's OSS and EDI documentation is adequate.[42] In the Finnegan Declaration in this proceeding, AT&T again recites data regarding its reject rates. For example, AT&T states that its overall reject rates have risen to 37.5% for all EDI orders in January 2003 and 42.1% in February.[43] We note that AT&T's overall reject rates for March declined to below these levels, to **[*** ***]**. Preliminary results for April indicate that AT&T's overall reject rate was approximately **[*** ***]**. As AT&T also states, for the four months ending in December 2002, AT&T's overall monthly reject rates ranged from 17% to 22%.[44] Thus,

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[40] AT&T itself concedes that the implementation of TN migration should lead to a decrease in reject rates, citing the Commission's own orders in prior Qwest Section 271 proceedings and other BOC Section 271 proceedings. *See* Finnegan Decl. at ¶ 46 and n.24, *citing Qwest III Order* at ¶ 89. AT&T neglects to mention, however, that the FCC also has expressly concluded that the introduction of a TN migration option is not a prerequisite for interLATA entry under Section 271. *See Qwest III Order* at ¶ 56.

[41] *See* AT&T April 10, 2003, Ex Parte in WC Docket No. 03-11, as modified by AT&T April 11, 2003, Ex Parte in WC Docket No. 03-11. Qwest responded to these *ex parte* filings in a letter dated April 11B, 2003, in WC Docket No. 03-11, which is attached herein as Reply Exh. CLD-2. *See also* Confidential Reply Exh. LN-1 (Qwest April 3, 2003, Ex Parte).

[42] *See Qwest IV Order* at ¶ 55 and n.176.

[43] Finnegan Decl. at ¶ 42. These particular figures cited by AT&T include both automated and manual rejects (PO-4B1 and PO-4B2). Herein, the term "overall" reject rate means that the rate includes both automated and manual rejects (*i.e.*, both PO-4B1 and PO-4B2 results).

[44] Finnegan Decl. at ¶41.

it appears that AT&T's January and February experience was anomalous. Because Qwest's systems were generally stable in January, February, and March, [45] it appears that changes AT&T may have made in its business operations may have caused an increase in automated rejects.[46] The Commission has held on several occasions that orders can fail for many reasons having nothing to do with the BOC and its OSS.[47]

16. AT&T states that "most of the rejection notices AT&T has received from Qwest in recent months state that the LSRs were rejected because the address on those LSRs were incorrect."[48] AT&T then observes that such address-based rejections would not have occurred if Qwest had implemented TN migration. As discussed above, however, the FCC has already concluded that TN migration is not a Section 271 requirement.[49] As also noted above, Qwest implemented TN migration for UNE-P on April 7,

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45 The IMA point release in January did not include any edits that would have been likely to increase a CLEC's reject rates.

46 AT&T's manual reject rates remained low in January and February, while their automated reject rates increased during those months, from **[*** ***]** during the period September to December 2002 to **[*** ***]** in January and February, respectively. *See* Qwest April 22A, 2003, Ex Parte, WC Docket No. 03-90, at Confidential Attachment A; Qwest April 30B, 2003, Ex Parte, WC Docket No. 03-90, (containing a refiled version of Confidential Attachment A). AT&T's manual reject rates remained low in March and April **[*** ***]**. AT&T's reject rates for automated rejects for March and April were **[*** ***]**.

47 *See, e.g., Qwest III Order* at ¶ 89 (rejecting allegations that Qwest's overall reject rates indicate systemic OSS problems based on the fact that "Qwest's overall reject rates are within the range the Commission previously found acceptable" and the fact that "a number of competing CLECs experience low reject rates"); *Georgia/Louisiana 271 Order* at ¶ 142 (noting that claims of high reject rates may not be entirely attributable to BellSouth); *New York 271 Order* at ¶ 175 (finding that wide variation in CLEC-specific reject rates is likely attributable to CLEC, not BOC, conduct).

48 Finnegan Decl. at ¶ 46.

49 *See Qwest III Order* at ¶ 56.

2003, as part of IMA release 12.0, and pursuant to the CMP prioritization process, in which AT&T was a participant.

17. Finally, AT&T contends that Qwest cannot properly rely on the low reject rates AT&T experienced in the Minnesota UNE-P trial because AT&T used the same address for every LSR.[50] Qwest already addressed this argument in the Qwest IV proceeding.[51] As Qwest stated there, "the results of the UNE-P trial are still meaningful because the low reject rates that AT&T achieved demonstrate that it is possible to have very low reject rates associated with change order activity, including feature activity."[52] With the implementation of TN migration, AT&T's address-validation related concerns will be greatly reduced.

18. In an April 29 *ex parte* filing in this proceeding, AT&T also cites the 49.16% overall PO-4B-2 reject rate for March 2003 as further evidence that Qwest's OSS is inadequate and is incapable of handling high volumes of CLEC orders. Qwest responded to this argument in a May 1 *ex parte*. As explained there, the increase in the March PO-4B-2 reject rate is largely attributable to an increase in the reject rate for a particular CLEC. When that CLEC's results are removed, the overall March reject rate drops to

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50 AT&T Comments at 21, n.68; Finnegan Decl. at ¶ 48.

51 *See* Reply Exhibit CLD-2 (Qwest April 11B, 2003, Ex Parte).

52 *Id.* at 2.

29.92%, a figure well within the range the FCC previously has found acceptable.[53]

19. Finally, in its comments on this application, MCI cites back to filings it made in the Qwest IV proceeding regarding its high reject rates.[54] (MCI does not offer new argumentation or evidence regarding reject rates in its Qwest V comments.) Qwest addressed these arguments fully in its reply comments and *ex parte* filings in Qwest IV.[55] Qwest notes here that while MCI's reject rates did not decline significantly overall in March, with a reject rate of **[*** ***]**, there was a significant decline in the last week of March, after MCI incorporated a systems fix. This reject rate reduction continued through April, with preliminary results of **[*** ***]**.[56]

20. In sum, then, neither AT&T nor MCI has established that the increases in reject rates they have experienced in 2003 are attributable to flaws in Qwest's OSS.

III. FLOW-THROUGH RATES

21. No CLEC raised concerns regarding Qwest's flow-through rates in this proceeding. Nevertheless, at the request of FCC staff, Qwest

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53 See Qwest May 1, 2003 Ex Parte, WC Docket No. 03-90, *citing Qwest III Order* at ¶ 89, n.316, which in turn cites *Bell Atlantic New York 271 Order*, 15 FCC Rcd 3953, 4044, n.552 (1999).

54 MCI Comments at 1-3.

55 *See* Qwest OSS Reply Declaration in WC Docket No. 03-11; Confidential Reply Exh. LN-1 (Qwest April 3, 2003, Ex Parte).

56 MCI implemented another systems change over the weekend of May 3. Based on Qwest's ad hoc results, it appears that the systems change **[*****

*****]**.

here explains why it missed the benchmark under PO-2B-1 for Resale in February and for UNE-P in February and March.[57]

22. In February, Qwest missed the benchmark under PO-2B-1 for Resale and UNE-P.[58] But both of these misses were minor and recent fixes to Qwest's systems render them moot. For Resale, Qwest flowed-through 2244 out of 2383 eligible LSRs (94.17%) in February. Five Resale LSRs did not flow-through that month because of CLEC-caused errors, and 53 other Resale LSRs did not flow-through because certain CSR information necessary for flow-through was not made available to Qwest's flow-through system. Qwest implemented a system modification on May 1, 2003, to address this issue. Had these 53 LSRs flowed-through in February (as they would today), Qwest would have easily met the 95% benchmark for PO-2B-1 that month.

23. For UNE-P, Qwest flowed-through 807 out of 923 eligible LSRs (87.43%) in February. Eleven UNE-P LSRs did not flow-through that month because of CLEC-caused errors, and 53 UNE-P LSRs did not flow-through because certain necessary rate zone information was not included on new connect LSRs. Qwest implemented a fix for the rate zone issue on April 7, 2002, with the release of IMA release 12.0. Had the 64 LSRs affected by these two issues flowed-through in February (as they would today), Qwest

57 *See* Minnesota Commercial Performance Results at 71 (PO-2B-1, Resale) and 77 (PO-2B-1, UNE-P).

58 *See id.*

would have flowed-through 94.36% of all UNE-P LSRs that month, which would have missed that 95% benchmark by a *de minimis* amount.

24. In March, Qwest's performance under PO-2B-1 for UNE-P improved, though Qwest again missed the benchmark. Specifically, Qwest flowed-through 1067 out of 1183 eligible LSRs (90.19%) in March. But, 12 UNE-P LSRs did not flow-through because of CLEC-caused errors, and 48 UNE-P LSRs did not flow-through because of the absence of rate zone information for new connect LSRs (discussed above); additionally, 11 UNE-P LSRs did not flow-through because of a one-day production issue involving a Qwest service order processor in the Eastern region. Had these 71 (12 + 48 + 11) LSRs flowed-through in March (as they would today), 96.19% of eligible UNE-P LSRs would have flowed-through that month.

IV. BILLING

25. The FCC repeatedly has held that Qwest provides CLECs with Wholesale bills and access to usage information on a non-discriminatory basis.[59] Twelve other regulatory commissions that have examined Qwest's billing systems in the context of a state Section 271 proceeding reached a similar conclusion. The Minnesota PUC "did not reach a collective decision" with respect to Qwest's billing capabilities because while two Minnesota PUC

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[59] *See Qwest IV Order* at ¶¶ 50-53 ("Based on the evidence in the record, we find . . . that Qwest provides nondiscriminatory access to its billing functions"); *Qwest III Order* at ¶¶ 114-131 (same).

commissioners[60] found that Qwest provides CLECs with non-discriminatory access to Wholesale billing and usage information, two other commissioners[61] did not.[62] But, as recently noted by the DoJ and as explained more fully below, the two commissioners that did not find Qwest's billing capabilities adequate relied on ALJ findings that were based on evidence previously considered – and rejected – by the FCC in an earlier Qwest Section 271 proceeding.[63]

26. Only one CLEC – AT&T – raised concerns with respect to Qwest's billing systems in its comments.[64] But, as also explained more fully below, most of the concerns raised by AT&T have either already been resolved or are unsupported. The rest relate to matters that do not affect finding of Section 271 compliance.

A. The Findings of the Minnesota PUC

27. The ALJ that evaluated Qwest's compliance with Section 271 in Minnesota found that "Qwest's application for [Section] 271

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60 *See* Minnesota PUC Comments at Attachment 1, Separate Comments of Chairman LeRoy Koppendrayer Regarding Checklist Items #2, #14 and Public Interest Aspects of Qwest's Minnesota 271 Application ("Koppendrayer Comments") at 20-21, and Attachment 2, Separate Comments of Commissioner Phyllis A. Reha Regarding Checklist Item #2, #14 and Public Interest Aspects of Qwest's Section 271 Filing at 26.

61 *See* Scott/Johnson Comments at 32-33.

62 *See* MN PUC Comments at 9.

63 *See* DoJ Evaluation at 8 ("Minnesota PUC Commissioners Scott and Johnson have clearly characterized their concerns regarding Qwest's billing as related to UNE-Star, and [the FCC] has already determined that these 'UNE-Eschelon/UNE-Star' billing issues 'appear to be disputes between the parties, and more appropriate for the interconnection dispute resolution process.' Moreover, although Qwest's own performance reports reflect billing inaccuracies in Minnesota, the errors are not obviously distinguishable from the 'one-time rate errors' and other misses deemed '*de minimis*' by the [FCC] in its prior orders") (footnote omitted).

64 *See* AT&T Comments at 22-24, Finnegan Decl. at ¶¶ 49-66.

approval . . . should not be approved until Qwest has demonstrated that all UNE-Star lines have been converted to UNE-P and that Qwest's billing system is capable of meeting the appropriate performance measures for [W]holesale billing and providing accurate daily usage files (sic) ("DUF") records to allow CLECs to appropriately charge for switched access."[65] It was these findings that prompted two Minnesota PUC commissioners to hold that Qwest's billing capabilities do not satisfy Checklist Item 2.[66] But, as explained in our initial OSS Declaration – and as explained again below – the ALJ's findings with respect to UNE-P/UNE-Star billing accuracy and the DUF should not affect an FCC finding of Section 271 compliance.[67]

28. It is worth noting at the outset that the evidence regarding billing and the DUF that the ALJ – and, consequently, Commissioners Scott and Johnson – relied on in reaching their decision was considered (and ultimately found unpersuasive) by the FCC in the Qwest I, II and III proceedings. During the Minnesota state OSS proceedings, the Minnesota Department of Commerce ("DOC") submitted two affidavits from representatives of Eschelon Telecom, Inc. ("Eschelon") and one affidavit from a representative of McLeodUSA ("McLeod") regarding billing.[68] These were

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65 *See* MN PUC Comments at 9.

66 *See* Scott/Johnson Comments at 32-33.

67 *See* OSS Decl. at ¶¶ 508-511, 515-518.

68 *See, e.g., In the Matter of a Commission Investigation Into Qwest's Compliance with Section 271 of the Telecommunications Act of 1996,* MPUC Docket No. P421/CI-01-1371, OAH Docket No. 12-2500-14486-2, The Minnesota Department of Commerce's Reply to the Exceptions of Qwest, February 10, 2003, at Exh. 42, Attachment WCD-23 (Affidavit of F. Lynn Powers, June 7, 2002); Second Post-

the affidavits the ALJ relied on in reaching his conclusions regarding billing accuracy and the DUF.[69] But these were *exactly the same* affidavits that were filed or incorporated by reference by Eschelon and McLeod in the Qwest I, II and/or III proceedings and ultimately rejected by the FCC.[70]

29. The only other billing-related evidence produced by any party in the course of the Minnesota state OSS proceedings (as relates to the ALJ's negative findings) was the *ex parte* submissions that Eschelon filed with the FCC in the Qwest III proceedings.[71] These *ex parte* filings were introduced into evidence in that proceeding by the Minnesota DOC.[72] But, like the affidavits filed by Eschelon and McLeod, these filings were duly

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Hearing Brief of the Minnesota Department of Commerce, November 13, 2002, at Exh. 42, WCD-14 (Affidavit Lori Deutmeyer, June 11, 2002); First Post-Hearing Brief of the Minnesota Department of Commerce, November 1, 2002, at Exh. 42, Attachment WCD-24 (Affidavit of Ellen Copley, June 3, 2002).

[69] *See Minnesota PUC ALJ Recommendations for Checklist Items 1, 2, 4, 5, 6, 11, 13 and 14* at ¶¶ 303-324.

[70] *See Application of Qwest Communications International Inc. for Authorization Under Section 271 to Provide In-Region, InterLATA Services in Colorado, Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington and Wyoming,* WC Docket No. 02-314, Comments of Eschelon Telecom, Inc., October 15, 2002, at Exh. 38 (Affidavits of F. Lynn Powers, June 7, 2002, and Ellen Copley, June 3, 2002); *Application of Qwest Communications International Inc. for Authorization to Provide In-Region, InterLATA Services in the States of Montana, Utah, Washington and Wyoming,* WC Docket No. 02-189, August 1, 2002, at Exhs. 8 (Affidavit of F. Lynn Powers, June 7, 2002) and 11 (Affidavit of Ellen Copley, June 3, 2002); Comments of McLeodUSA Telecommunications Services, Inc., August 1, 2002, at 4, n.1 (citing the Affidavit of Lori Deutmeyer, June 11, 2002, as filed by the Minnesota Department of Commerce in WC Docket No. 02-89 on July 2, 2002); *Application of Qwest Communications International Inc. for Authorization to Provide In-Region, InterLATA Services in Colorado, Idaho, Iowa, Nebraska and North Dakota,* WC Docket No. 02-148, Comments of Eschelon Telecom, Inc., July 3, 2002, at Exhs. 8 (Affidavit of F. Lynn Powers, June 7, 2002) and 11 (Affidavit of Ellen Copley, June 3, 2002); Comments of McLeodUSA Telecommunications Services, Inc., July 3, 2002, at 4, n.1 (citing the Affidavit of Lori Deutmeyer, June 11, 2002, as filed by the Minnesota Department of Commerce in WC Docket No. 02-89 on July 2, 2002).

[71] *See, e.g.*, Eschelon Ex Parte, WC Docket Nos. 02-148 and 02-189, September 4, 2002.

[72] *See, e.g., In the Matter of a Commission Investigation Into Qwest's Compliance with Section 271 of the Telecommunications Act of 1996,* MPUC Docket No. P421/CI-01-1371, OAH Docket No. 12-2500-14486-2, Supplemental Surreply Affidavit of Terry L. Murray on Behalf of the Minnesota Department of Commerce, September 10, 2002 ("DOC Murray Affidavit"), at Exh. TLM-15 (Eschelon's September 4, 2002, *ex parte* Comments to the FCC).

considered and rejected by the FCC in the Qwest III proceeding. In short, the evidence considered by the ALJ – and, in turn, Commissioners Scott and Johnson – was already considered and dismissed by the FCC in previous Section 271 proceedings.

1. Billing Accuracy Under BI-3A

30. The ALJ made three principal findings in connection with Qwest's UNE-P/UNE-Star billing accuracy. First, the ALJ held that Qwest's practice of billing UNE-Star at the Resale rate and then initiating adjustments to modify those charges renders Qwest's results under PID BI-3A – which measures billing accuracy for UNEs and Resale – inaccurate.[73] Second, the ALJ held that Qwest inappropriately fails to consider the manual adjustments it makes in the course of calculating its UNE-Star bills as adjusted "errors" under BI-3A.[74] Third, the ALJ held that Qwest's failure to meet the parity standard under BI-3A necessitates a finding that Qwest does not meet the non-discrimination requirement of Section 271.[75] As noted above and explained more fully below, all of the evidence relied on by the ALJ when he made these findings (or, in the case of Qwest's performance under BI-3A, evidence that is analogous) was already considered by the FCC in the

73 *See Minnesota PUC ALJ Recommendations for Checklist Items 1, 2, 4, 5, 6, 11, 13 and 14* at ¶¶ 303-313.

74 *See id.*

75 *See id.* AT&T makes a similar claim. *See* AT&T Comments at 22, Finnegan Decl. at ¶ 51.

Qwest III proceeding and was found to not prevent a finding of Section 271 compliance.[76]

a. Billing UNE-Star at the Resale Rate and Then Initiating Adjustments

31. With respect to Qwest's practice of billing UNE-Star at the Resale rate and then initiating adjustments, the FCC already rejected the claim that this renders Qwest's UNE-Star bills inaccurate.[77] Initially, in order to bill a CLEC for UNE-Star, Qwest's billing systems required – and Qwest's interconnection agreements with CLECs provided – that the CLEC be billed at the Resale rate and that appropriate adjustments be made to conform the charge to the UNE-Star rate. Qwest billed CLECs for UNE-Star in this manner because, at the time UNE-Star was created, Qwest's billing systems could not accommodate a separate rating mechanism for that product.

32. Since that time, Qwest has modified its systems to bill UNE-Star without adjusting from the Resale rate. But the few CLECs that ordered UNE-Star in the past continue to require that Qwest use the old billing method because they have not yet converted their embedded base.[78] As a result, these CLECs' accounts continue to appear in Qwest's billing

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[76] *See Qwest III Order* at ¶¶ 37, 129, n.478, and ¶ 130; *see also* OSS Decl. at ¶¶ 508-511, 515-518.

[77] *See Qwest III Order* at ¶ 130; *see also* OSS Decl. at ¶ 516.

[78] At the request of Commission staff, Qwest includes herein Reply Exh. CLD-3 (Breakdown of "Traditional" and "Star" Volumes for UNE-P-POTS and UNE-P-Centrex in Minnesota, November 2002 – March 2003).

systems as "Resale" accounts (requiring billing adjustments) and not as UNE-Star or UNE-P accounts. Regardless, the adjustments Qwest continues to make to generate UNE-Star bills are not caused by mistakes Qwest makes in the billing process. Rather, these adjustments are necessary and deliberate.

33. In the Qwest III proceeding, Eschelon claimed that Qwest inappropriately classifies UNE-Star lines, which "are ordered as [R]esale," in its UNE-P reporting, thus rendering Qwest's UNE-P reporting inaccurate.[79] This essentially is the same finding made by the ALJ that was adopted by Commissioners Scott and Johnson.[80] But the FCC explicitly rejected this claim in the Qwest III proceeding, holding that "Eschelon's allegations regarding the bills for [UNE-Star/UNE-P] . . . are more appropriate for the interconnection dispute resolution process.[81]

34. Significantly, when the ALJ rendered his decision in this area, he considered precisely the same evidence – the claims made by Eschelon – that was before the FCC in the III proceeding.[82] Indeed, the information relied on by the ALJ was a verbatim restatement of the claims

[79] *See* Eschelon Ex Parte, WC Docket Nos. 02-148 and 02-189, September 4, 2002, ("Eschelon September 4 Ex Parte"), at 12-14. The records in WC Docket Nos. 02-148 and 02-189 were incorporated by reference into the III proceeding.

[80] *See Minnesota PUC ALJ Recommendations for Checklist Items 1, 2, 4, 5, 6, 11, 13 and 14* at ¶¶ 303-313; Scott/Johnson Comments at 32-33.

[81] *See Qwest III Order* at ¶ 130, n.481.

[82] *Compare* Eschelon September 4 Ex Parte at 12-14 *with* DOC Murray Affidavit at Exh. TLM-15.

Eschelon made in the III proceeding.[83] The ALJ's findings in this area – and, in turn, the two Minnesota PUC Commissioners' reliance on those findings – therefore ignore the FCC's conclusions and should be rejected.

b. Not Considering Manual Adjustments "Errors" Under BI-3A

35. With respect to Qwest's failure to consider as "errors" under BI-3A the adjustments it makes to UNE-Star bills, these adjustments are, as noted above, both reasoned and deliberate and are explicitly required under Qwest's interconnection agreements with the carriers that order UNE-Star.[84] The ALJ held that Qwest cannot satisfy Section 271 until all CLEC UNE-Star accounts are migrated to UNE-P so that Qwest can no longer engage in the practice of billing UNE-Star at the Resale rate and then making the appropriate adjustments.[85]

36. Qwest has discussed the issue of migrating these accounts with the relevant CLECs, but each has declined to migrate all of its accounts from UNE-Star to UNE-P. The ALJ's decision – and, in turn, the findings of the two Minnesota PUC Commissioners that adopted the ALJ's finding in this area – therefore would hold Qwest to a standard that the company cannot possibly meet without impermissibly interfering with CLEC end user accounts. Indeed, in his separate comments, the Chairman of the Minnesota

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83 *See id.*

84 *See Qwest III Order* at ¶ 130; *see also* OSS Decl. at ¶ 516.

85 *See Minnesota PUC ALJ Recommendations for Checklist Items 1, 2, 4, 5, 6, 11, 13 and 14* at ¶ 309.

PUC expressly noted that he disagreed with the ALJ's findings in this area "because Qwest cannot force Eschelon and McLeod to move their end user customers from UNE-Star to UNE-P against these CLECs' will."[86]

c. Commercial Performance Results Under BI-3A

37. With respect to Qwest's failure to meet the parity standard in Minnesota under BI-3A in recent months, the FCC previously has held that instances of PID non-compliance – particularly "where the margin of disparity is small" – generally will not result in a finding of Section 271 non-compliance.[87] Although Qwest technically missed the parity standard under BI-3A in Minnesota between October 2002 and March 2003, over 98% of the charges on Wholesale bills it has provided to CLECs during this period (with the exception of October and December, 2002, in which this figure was 96%) have been accurate, according to BI-3A's result.[88] These figures are consistent with – and often exceed – Qwest's performance in the six months preceding the FCC's grant of the Qwest III and IV applications.[89]

38. In the Qwest IV proceeding, the FCC found Qwest's billing accuracy in Oregon – which was 84.23% for CLECs versus 99.18% for Qwest Retail, on average, from September 2002 through January 2003 –

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86 *See* Koppendrayer Comments at 20.

87 *See Qwest III Order* at ¶¶ 37, 129, n.478.

88 *See* Minnesota Commercial Performance Results at 108.

89 *Compare id. with Qwest IV Order* at ¶ 50, n.160 and *Qwest III Order* at ¶ 129, n.478.

sufficient to support a finding of Section 271 compliance.[90] Qwest's performance in Minnesota over the past six months is far better than it was in Oregon. Specifically, as noted above, Qwest has provided charges to CLECs that were 98% accurate in four of the past six months and 96% accurate in two of the past six months.[91] That Qwest technically missed the parity standard under BI-3A in those months therefore does not mean that Qwest has experienced any systemic or CLEC-wide billing problems.

39. As noted by the DoJ in its evaluation, Qwest's performance in Minnesota under BI-3A also meets or exceeds the level of performance the FCC found acceptable in the Qwest III proceeding.[92] Specifically, in the Qwest III proceeding, the FCC found that Qwest provides accurate bills to CLECs even though Qwest missed the parity standard under BI-3A in Iowa, North Dakota, Nebraska and Utah in three of the four months prior to the issuance of the *Qwest III Order*.[93] The FCC made this finding based on the fact that Qwest's Retail performance under BI-3A exceeded its Wholesale performance by only 0.68% to 1.59% on average in each month.[94] Qwest's performance in Minnesota under BI-3A is equal to – and in some

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[90] *See Qwest IV Order* at ¶¶ 50, 160. The FCC recognized that Qwest's performance in Oregon during this time period was affected by billing disputes that may have occurred in months outside of the application period. *See id.*

[91] *See* Qwest Minnesota Commercial Performance Results at 108 (BI-3A).

[92] *See* DoJ Evaluation at 8 ("[A]lthough Qwest's own performance reports reflects billing inaccuracies in Minnesota, the errors are not obviously distinguishable from the 'one-time rate errors' and other misses deemed *'de minimis'* by the [FCC] in its prior orders") (footnote omitted).

[93] *See Qwest III Order* at ¶ 129, n.478.

[94] *See id.*

months exceeds – the company's performance in the Qwest III application. Indeed, the difference between Qwest's Retail and Wholesale performance in Minnesota has been a mere 1.427% on average over the past four months.[95]

40. In short, although Qwest has missed the parity standard in Minnesota under BI-3A in recent months, these misses have been *de minimis* and, as in Qwest's earlier Section 271 proceedings, should not affect a finding of checklist compliance.

2. DUF

41. The FCC previously has held that Qwest provides CLECs with complete, accurate and timely DUFs.[96] When considering the same evidence that was before the FCC when it made this finding, the ALJ held that Qwest does not provide CLECs with accurate DUFs.[97] But the ALJ's finding – and, in turn, the reliance of Commissioners Scott and Johnson on

[95] *See* Qwest Minnesota Commercial Performance Results at 108 (BI-3A). Specific explanations as to why Qwest missed the parity standard for BI-3A from October 2002 through January 2003 can be found in the Declaration of Michael G. Williams, Performance Measures. *See* Performance Measures Decl. at ¶¶ 204-205. As alluded to above, Qwest missed the parity standard under BI-3A in February and March 2003, but, again, these misses are easily explainable and do not affect a finding of Section 271 compliance. For instance, Qwest missed the parity standard in February because of adjustments it had to issue for a single CLEC. Apparently, the SDC that wrote the orders for this CLEC's conversions mistakenly assessed non-recurring charges in lieu or, or in addition to, customer transfer charges. This required a subsequent billing adjustment that prompted Qwest to miss the BI-3A parity standard in February. Nevertheless, even with this miss, nearly 99% of all Resale and UNE bills Qwest provided to CLECs in February were accurate. *See id.* Qwest's performance was equally strong in March even though Qwest also missed the parity standard that month. Specifically, 98.30% of all Resale and UNE bills Qwest provided to CLECs that month were accurate under BI-3A. *See id.* Qwest missed the benchmark in March because of ongoing cost docket implementation and because Qwest had to compensate for an SDC error that resulted in a double credit in an earlier month. Both of these issues have since been addressed.

[96] *See Qwest IV Order* at ¶ 51; *Qwest III Order* at ¶¶ 116-118.

[97] *See Minnesota PUC ALJ Recommendations for Checklist Items 1, 2, 4, 5, 6, 11, 13 and 14* at ¶ 96. *See also* AT&T Comments at 22, Finnegan Decl. at ¶ 50. The evidence that was before the ALJ when he made this determination were the affidavits of Lynn Powers and Ellen Copley, both of which were filed by Eschelon on July 2, 2002, and other *ex parte* filings by Eschelon in the Qwest I and II proceedings before the FCC.

those findings – was based on evidence concerning an old manual process for providing usage information for UNE-Star.[98] The ALJ's finding did not take into account Qwest's unrebutted testimony in Minnesota that the manual process is no longer used and that UNE-Star DUF provisioning was mechanized in mid-2001. The Chairman of the Minnesota PUC expressly pointed this out (and therefore disagreed with the findings of the ALJ) in his separate comments in this proceeding.[99] As stated by the Chairman, and as noted in the initial OSS Declaration, Qwest has used precisely the same DUF-related systems and processes for UNE-Star as it has for UNE-P since mid-2001.[100] This alone should render the ALJ's finding – and, in turn, the reliance of Commissioners Scott and Johnson on that finding – moot.

42. Once again, the ALJ reached his conclusion with respect to Qwest's DUF based on information that Eschelon filed – and the FCC considered – in Qwest I and II proceedings (which was incorporated by reference into the Qwest III proceeding).[101] In Minnesota, the DOC submitted an affidavit prepared by Eschelon in which Eschelon claimed that 2.7% of its DUF records were not delivered by Qwest because of toll guide

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98 *See id.*

99 *See* Koppendrayer Comments at 20-21 ("I find that Qwest has made a compelling argument that the manual process is no longer used. UNE-Star DUF provisioning was converted to a mechanized process in mid-2001, and, since that time, Qwest has used the same systems and processes for providing DUF for UNE-Star that it uses for UNE-P").

100 *See id. See also* OSS Decl. at ¶ 509.

101 *See* OSS Decl. at ¶ 511.

errors.[102] When Eschelon made this same allegation in an earlier Section 271 proceeding, the FCC acknowledged Eschelon's claim but nevertheless held that "the evidence on the record demonstrates that Qwest provides competing carriers with complete, accurate and timely reports on their customers' service usage."[103] Regardless, Qwest has since fixed the toll guide errors and intends to implement an additional fix this year in the Eastern region so that if similar toll guide errors arise in the future they do not result in DUF processing errors. In short, there simply is no issue here.

3. Other Billing-Related Issues Raised by Commissioners Scott and Johnson

43. In addition to supporting the findings of the ALJ, Commissioners Scott and Johnson make some additional claims regarding Qwest's billing capabilities.[104] These claims generally fall into two categories: (a) proposed modifications to BI-3A; and (b) proposed modifications in connection with evaluating and reporting on the DUF.[105] But, like the issues raised by the ALJ, none of these concerns prevents the FCC from finding that Qwest billing capabilities meet the requirements of Section 271.

a. Proposed Modifications to BI-3A

44. Commissioners Scott and Johnson first claim that in order for Qwest to demonstrate that its billing system is performing at an

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[102] *See* Transcript of Minnesota PUC Meeting, March 5, 2003, at 47 (lines 7-15).

[103] *See Qwest III Order* at ¶ 117 and n.443.

[104] *See* Scott/Johnson Comments at 32-33.

[105] *See id.*

adequate level, Qwest should be required to modify BI-3A to reflect (1) the percent of CLEC bills in error rather than percent of total dollars adjusted; and (2) the adjustment in the month the CLEC was incorrectly billed rather than in the month the adjustment was made. In evaluating Qwest's performance under BI-3A, Commissioners Scott and Johnson further state that the FCC should review aggregate results as well as CLEC-specific results by service type, with the aggregate and CLEC-specific results compared to ensure that they are consistent.[106] Each of these claims is addressed below.

45. Percent vs. Total Dollars Adjusted: Commissioners Scott's and Johnson's first proposed modification to BI-3A is that it should reflect the percent of CLEC bills in error rather than percent of total dollars adjusted.[107] The issue of whether to design BI-3A to reflect the percent of CLEC bills that were in error rather than percent total dollars adjusted arose briefly during Qwest's initial discussions with CLECs on how Qwest's billing accuracy should be evaluated. This issue was discussed because some believed that a report of percentage of total dollars adjusted, rather than the percentage of CLEC bills in error, would be more useful because not all bills are equal (some require a higher payment amount than others).

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106 *See id.* at 32.

107 *See id.*

46. If BI-3A reported the percentage of CLEC bills in error, then months in which bills were issued with inaccuracies of a high dollar value could not be distinguished from months in which bills were issued with the same number of inaccuracies with a lower dollar value. This could distort the results of BI-3A and not necessarily reflect the true impact Qwest's billing inaccuracies may have on CLECs in a given month. As a result, BI-3A is reported based on the percentage of total dollars adjusted.

47. Although BI-3A is the product of Qwest and CLEC negotiation, CLECs have an opportunity to request that revisions be made to the PID – if they believe such revisions are necessary – through the LTPA process. LTPA discussions are ongoing, and, to date, CLECs have agreed that LTPA is the proper forum in which concerns regarding BI-3A should be raised and addressed.[108]

48. Reflecting Bill Month vs. Adjustment Month: Commissioners Scott's and Johnson's second proposed modification to BI-3A is that it should reflect adjustments in the month the CLEC was incorrectly billed rather than in the month the adjustment was made because the current version of BI-3A "allows Qwest to hide many months of errors by

[108] *See, e.g., In the Matter of Qwest Corporation's Colorado Performance Assurance Plan,* Docket No. 02M-259T, Comments of Eschelon Telecom, Inc., May 2, 2003, at 1 ("Eschelon believes the parties will address the billing concerns raised by Eschelon in the LTPA forum"); AT&T's Additional Feedback on the Colorado Performance Assurance Plan Six-Month Review, May 2, 2003, at 4 ("AT&T now believes that additional experience with Qwest's BI-3 payments needs to be gained before the concern can be adequately addressed").

making one adjustment in a single month."[109] To begin with, neither Commissioners Scott nor Johnson – nor any other party – has provided any evidence that suggests that Qwest manipulates its BI-3A results to make them appear minimal by grouping multiple billing errors into one adjustment. Moreover, in order to do so, Qwest would have to delay settling disputes. This sort of delay would be reflected in BI-5, which measures timeliness of dispute resolution, and could cause Qwest to miss that PID. CLECs could arguably "game" the system themselves by submitting billing disputes relating to a single bill over the course of several months rather than in one submission. There simply is no evidence that any of this happens.[110]

49. Regardless, the proposal set forth by Commissioners Scott and Johnson is, as a practical matter, unworkable because if Qwest were required to record Wholesale billing adjustments under BI-3A in the month in which the CLEC was billed rather than in the month in which the adjustment was made, then Qwest would have to modify its BI-3A results every month to reflect these adjustments. This would essentially render BI-3A meaningless as a reporting tool, as its results would always be in a state of flux.

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109 *See id.*

110 Indeed, AT&T recently agreed that "additional experience with Qwest's BI-3 payments needs to be gained before [this] concern can be adequately addressed." *See supra*, note 108.

50. As noted above, any proposed changes to BI-3A are appropriate for discussion in the LTPA process, where any party can to suggest refinements that could make this PID even more useful.

51. Evaluating BI-3A by Comparing Aggregate and CLEC-Specific Results: Commissioners Scott and Johnson claim that in evaluating Qwest's performance under BI-3A, the FCC should review Qwest's aggregate performance results and its CLEC-specific results by service type, with the aggregate and CLEC-specific results compared to ensure that they are consistent.[111] But BI-3A was not designed to be reported in this manner. Qwest already reports its performance under BI-3A in the aggregate (*i.e.*, for all CLECs) as well as on a CLEC-specific basis (CLECs receive their specific results). Qwest does not report its results under BI-3A by product. Again, should the CLECs believe it necessary that Qwest do so, the appropriate forum for discussing this issue is the LTPA.

b. Proposed Modifications to the DUF

52. Commissioners Scott and Johnson claim that before Qwest receives Section 271 approval its DUF should be audited using two or three months of data to assure its accuracy.[112] This is precisely what KPMG did, but in an even more thorough manner than Commissioners Scott and Johnson seek, during the ROC Third Party Test.

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111 *See* Scott/Johnson Comments at 32-33.

112 *See id.*

53. KPMG performed two separate tests – Test 19 and Test 19.6 – to evaluate Qwest's DUF. Test 19 analyzed Qwest's daily message processing to ensure that usage record types – including access records, rated records, un-rated records and credit records – appear accurately on the DUF. Qwest satisfied all six of the evaluation criteria that were part of this test. Test 19.6 evaluated the operational processes and related documentation Qwest uses to create and transmit DUF files, accept DUF returns, and investigate potential errors. Qwest satisfied the applicable evaluation criteria under Test 19.6 as well.[113] Indeed, KPMG made thousands of calls in the course of the test and verified that the usage information for those calls appeared on the DUF. The audit requirement that Commissioners Scott and Johnson propose therefore has already been more than satisfied.

54. Commissioners Scott and Johnson also claim that before Qwest can be found in compliance with Section 271 Qwest should be required to develop and meet a new billing PID "to reflect completeness of daily usage files."[114] In other words, Commissioners Scott and Johnson believe that, in addition to evaluating DUF timeliness – which Qwest currently does through PID BI-1 – Qwest should be required to develop and meet a billing PID that evaluates whether the DUF files it sends to CLECs on a daily basis are complete.

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[113] KMPG was "unable to determine" whether Qwest could satisfy two of the 19 evaluation criteria under Test 19.6. *See* OSS Decl. at ¶¶ 532-533.

[114] *See* Scott/Johnson Comments at 32-33.